

November 22, 2005

Mr. David C. Peeler, Manager
Water Quality Program
Department of Ecology

Re: Public Comment on Draft of CAFO NPDES and State Waste Discharge General Permit

Dear David:

Please find my comment on the Draft CAFO NPDES and State Waste Discharge General Permit below. I have outlined the points I wish to make using the format of the Draft Permit, so the letters and numbers correspond to the Draft.

I am submitting these comments as a member of the Washington State Department Livestock Nutrient Management Development and Oversight Committee.

First, I would like to congratulate you and your excellent staff for drafting a clear, concise, logical, and comprehensive general permit. My comments below are intended to address a few issues that are of concern primarily to the environmental community, but that also may help all of the stakeholders and the responsible agencies to protect the waters of the state while respecting the very real practical and financial needs of the livestock producers.

Comments on Text of Draft:

Definitions:

1. (b) “any portion”: This is rather vague. Does this mean that if any portion, no matter how small, has something growing in the normal growing season, then the lot or facility is not an AFO? This question corresponds to the request from the WA Cattlemen’s Association for a clear definition of what would be sufficient vegetative cover to avoid meeting the AFO definition. (See WSDA Summary of LNMP Draft Legislative Comments, 10/27/05).

8. I suggest adding the word “released” after “applied,” so that it would read as follows: “to which manure, litter or process wastewater from the production area is or may be applied or released.” I am thinking of a negligent or unintentional release.

S 1. D. Visual Inspections: Are these required inspections to be documented? If so, it might be useful to state that here, since no specific requirement for recording the inspections is here now. (I am assuming that there is such a record requirement for visual inspections; if not, then I suggest that there should be.)

S 3. A. 1. “Equivalent best management practices” should be approved, if any, by the Conservation Districts, using their site-specific expertise. The technical expertise for this exists within the Conservation Districts which have the trained and certified specialists required by the Second Circuit decision (at p. 21, note 19). There is no reason to re-create this expertise in the WSDA, even if funding and staffing were fully available.

2. & 3. Requirements to develop a nutrient management plan: These two sections are based on “field-specific assessment.” This is something that the CD’s are best equipped to do. Their role should be incorporated in these sections.

3. d. “periodically inspect”: How often should these inspections be done? Some definition of what is meant by “periodically” should be included.

4. Should this apply to all livestock operations, not just dairies? If not, why not?

Also, I suggest adding the words, “as amended” at the end in place of “or other agency designated by the legislature. That takes care of legislated changes in the future without suggesting what those changes should be.

S 3.B. Nutrient Management Plan Approval and Implementation: If coverage under the general permit constitutes initial approval of a plan, then it is necessary to add the DC’s to the coverage requirements.

2. Add a requirement that the CD’s or other approved technical experts have verified or certified the plans.

S 4. A. 1.b. Record Keeping. Add a public disclosure requirement here as follows: “For any discharge, the following records are required and must be made available to the public upon request.” This is information that the public has the right to have.

2.b.(1) Why are records of inspections for medium CAFOs and designated CAFOs exempt?

A. 2. a. Production Area and 2.b. Land Application Area: For both of these lists of items, in order to protect the business interests of the producers, it should be possible to designate those that the public has a right and a need to have access to and those that do not need to be disclosed. This might be a means of addressing the Second Circuit’s requirement for public access (pp. 26-28).

B. Reporting:

- 1.** Discharge should be reported to the CD’s and notice given to affected members of the public.
- 2.** Physical failures should be reported to the CD’s and notice given to affected members of the public.
- 3.** Annual reporting. At least subsections c, f, g, and h should include public access to the information.

S 5. Waste Storage Facilities. The role of the CD's should be called out specifically in this section.

S F. Termination of Coverage. C. The CD's role in site inspections for the termination of a permit should be called out here.

G 12. General Permit Modification and Revocation. D. What is an example of "unacceptable pollution"? Or perhaps the better question is, what is an example of "acceptable pollution"?

G 17. Penalties for Violating Permit Conditions. It may be a good idea to consider adding postponement of penalties for first time offenders under certain circumstances in order to encourage voluntary compliance. This has been requested by the WA Cattlemen's Association and by the WA Dairy Federation. I think we should built in incentives for voluntary compliance wherever possible. This could be an important incentive for both reporting an unpermitted discharge and for working with a producer to prevent it in the future.

Thank you for your time and attention to my comments.

Sincerely yours,

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